

1 JEFFREY B. COOPERSMITH (SBN 252819)
2 AMY WALSH (Admitted Pro Hac Vice)
3 STEPHEN A. CAZARES (SBN 201864)
4 ORRICK, HERRINGTON & SUTCLIFFE LLP
5 The Orrick Building
6 405 Howard Street
7 San Francisco, CA 94105-2669
8 Telephone: (415) 773-5700
9 Facsimile: (415) 773-5759

10 Email: jcoopersmith@orrick.com; awalsh@orrick.com;
11 scazares@orrick.com

12 Attorneys for Defendant
13 RAMESH "SUNNY" BALWANI

14 UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA
15
16 SAN JOSE DIVISION

17 UNITED STATES OF AMERICA,

18 Plaintiff,

19 v.

20 RAMESH "SUNNY" BALWANI,

21 Defendant.

Case No. CR-18-00258-EJD

**JOINT STATEMENT IN ADVANCE OF
PRETRIAL CONFERENCE**

Hon. Edward J. Davila

JOINT STATEMENT IN ADVANCE OF PRETRIAL CONFERENCE

This matter is set on February 4, 2022 for a pretrial conference and hearing on motions *in limine*. On January 7, 2022, the parties filed their respective pretrial conference statements. Dkt. Nos. 1240, 1241. At the February 4, 2022 hearing, the parties will be prepared to address the matters discussed in the pretrial statements and Criminal Local Rule 17.1-1(b).

The parties respectfully recommend the motions *in limine* be addressed in the following order, subject to the Court's preferences:

1	<u>Dkt. 1156</u> Mot. 1156 at 1 Resp. 1181 at 1 Reply 1193 at 1	Balwani's MIL 1 to exclude evidence of accuracy and reliability of tests run on unmodified commercial devices
2	<u>Dkt. 1155</u> Mot. 1155 at 7 Resp. 1179 at 6 Reply 1195 at 4	Government's MIL 7 to admit Exhibit 4621 (CMS Letter and the accompanying January 26, 2016 Form CMS-2567, Statement of Deficiencies) The government asserts that its MIL 7 should be argued separately from Mr. Balwani's MIL 1. Mr. Balwani asserts that these two motions present related issues and should be argued together.
3	<u>Dkt. 1156</u> Mot. 1156 at 20 Resp. 1181 at 14 Reply 1193 at 16	Balwani's MIL 3 to exclude evidence of Theranos' voiding test results
4	<u>Dkt. 1156</u> Mot. 1156 at 12 Resp. 1181 at 8 Reply 1193 at 11	Balwani's MIL 2 to exclude expert testimony of Dr. Das
5	<u>Dkt. 1156</u> Mot. 1156 at 36 Resp. 1181 at 20 Reply 1193 at 21	Balwani's MIL 5 to exclude expert testimony offered by lay witnesses

6	<p><u>Dkt. 1156</u> Mot. 1156 at 40 Resp. 1181 at 23 Reply 1193 at 23</p> <p><u>Dkt. 1155</u> Mot. 1155 at 12 Resp. 1179 at 8 Reply 1195 at 6</p>	Balwani's MIL 6 to exclude irrelevant and inflammatory text messages and Government's MIL 8 to admit text messages between Holmes and Balwani
7	<p><u>Dkt. 1156</u> Mot. 1156 at 30 Resp. 1181 at 18 Reply 1193 at 19</p>	Balwani's MIL 4 to exclude coconspirator statements
8	<p><u>Dkt. 1155</u> Mot. 1155 at 6 Resp. 1179 at 4 Reply 1195 at 4</p>	<p>Government's MIL 6 to preclude defendant from offering actions taken by Theranos after defendant left the company</p> <p>The government asserts that its MIL 6 should be argued separately from Mr. Balwani's MIL 4. Mr. Balwani asserts that these two motions present related issues and should be argued together.</p>
9	<p><u>Dkt. 1155</u> Mot. 1155 at 16 Resp. 1179 at 9 Reply 1195 at 9</p>	Government's MIL 9 to admit Theranos emails as business records
10	<p><u>Dkt. 1155</u> Mot. 1155 at 19 Resp. 1179 at 12 Reply 1195 at 10</p>	Government's MIL 12 to exclude Mr. Balwani's mother's blood test
11	<p><u>Dkt. 1155</u> Mot. 1155 at 14 Resp. 1179 at 9 Reply 1195 at 8</p>	Government's MIL 10 to admit statements by Theranos and Theranos employees and agents
12	<p><u>Dkt. 1155</u> Mot. 1155 at 22 Resp. 1179 at 13 Reply 1195 at 12</p>	Government's MIL 14 to order Defendant to produce reverse <i>Jencks</i>
13	<p><u>Dkt. 1155</u> Mot. 1155 at 5 Resp. 1179 at 3 Reply 1195 at 3</p>	Government's MIL 4 to preclude a defense argument that the government's charging decisions were influenced by coordination with journalists or competitors
14	<p><u>Dkt. 1155</u> Mot. 1155 at 1 Resp. 1179 at 1 Reply 1195 at 1</p>	Government's MIL 1 to preclude defendant from offering an improper defense of blaming his victims

15	<u>Dkt. 1155</u> Mot. 1155 at 18 Resp. 1179 at 11 Reply 1195 at 10	Government's MIL 11 to exclude self-serving hearsay statements by Defendant in interviews/SEC testimony
16	<u>Dkt. 1155</u> Mot. 1155 at 20 Resp. 1179 at 13 Reply 1195 at 11	Government's MIL 13 to admit testimony from non-paying patients
17	<u>Dkt. 1155</u> Mot. 1155 at 5 Resp. 1179 at 3 Reply 1195 at 3	Government's MIL 5 to preclude defendant from presenting an improper good faith defense
18	<u>Dkt. 1155</u> Mot. 1155 at 4 Resp. 1179 at 2 Reply 1195 at 2	Government's MIL 3 to preclude an improper advice of counsel defense
19	<u>Dkt. 1155</u> Mot. 1155 at 3 Resp. 1179 at 2 Reply 1195 at 2	Government's MIL 2 to preclude defense from referencing punishment in front of the jury
20	<u>Dkt. 1156</u> Mot. 1156 at 50 Resp. 1181 at 26 Reply 1193 at 25	Balwani MIL 8 adopting certain motions previously filed by Elizabeth Holmes – Motion to exclude evidence of wealth, spending, and lifestyle
21	<u>Dkt. 1156</u> Mot. 1156 at 53 Resp. 1181 at 27 Reply 1193 at 26	Balwani MIL 8 adopting certain motions previously filed by Elizabeth Holmes – Motion to exclude customer impact evidence
22	<u>Dkt. 1156</u> Mot. 1156 at 55 Resp. 1181 at 29 Reply 1193 at 29	Balwani's MIL 8 adopting certain motions previously filed by Elizabeth Holmes – Evidence of fault for loss of Theranos' LIS
23	<u>Dkt. 1156</u> Mot. 1156 at 62 Resp. 1181 at 30	Balwani's MIL 8 adopting certain motions previously filed by Elizabeth Holmes – adopting Ms. Holmes' motion to suppress
24	<u>Dkt. 1156</u> Mot. 1156 at 58 Resp. 1181 at 25	Balwani MIL 8 to reconsider rulings from the Holmes trial – Motion to exclude bad acts of Theranos agents and employees

The parties do not request oral argument on the following motions:

1	<u>Dkt. 1156</u> Mot. 1156 at 45 Resp. 1181 at 24 Reply 1193 at 25	Balwani MIL 7 to exclude evidence of Mr. Balwani's license plate	Government does not oppose
2	<u>Dkt. 1155</u> Mot. 1155 at 23 Resp. 1179 at 15 Reply 1195 at 12	Government's MIL 15 to exclude Mr. Balwani's three experts	Government submits its motion is moot
3	<u>Dkt. 1156</u> Mot. 1156 at 51 Resp. 1181 at 26 Reply 1193 at 26	Balwani MIL 8 adopting certain motions previously filed by Elizabeth Holmes – Motion to exclude evidence of certain settlements	The parties submit on the papers
4	<u>Dkt. 1156</u> Mot. 1156 at 52 Resp. 1181 at 27 Reply 1193 at 26	Balwani MIL 8 adopting certain motions previously filed by Elizabeth Holmes – Motion to exclude certain news articles	The parties submit on the papers
5	<u>Dkt. 1156</u> Mot. 1156 at 53 Resp. 1181 at 28 Reply 1193 at 27	Balwani MIL 8 adopting certain motions previously filed by Elizabeth Holmes – Motion to exclude evidence of alleged blaming and vilifying of competing companies and journalists	The parties submit on the papers
6	<u>Dkt. 1156</u> Mot. 1156 at 54 Resp. 1181 at 28 Reply 1193 at 28	Balwani MIL 8 adopting certain motions previously filed by Elizabeth Holmes – Motion to exclude evidence of tests not identified on the Bill of Particulars	The parties submit on the papers
7	<u>Dkt. 1156</u> Mot. 1156 at 56 Resp. 1181 at 25	Balwani MIL 8 to reconsider rulings from the Holmes trial – Motion to exclude anecdotal evidence	The parties submit on the papers
8	<u>Dkt. 1156</u> Mot. 1156 at 56 Resp. 1181 at 25	Balwani MIL 8 to reconsider rulings from the Holmes trial – Motion to exclude FDA inspection evidence	The parties submit on the papers
9	<u>Dkt. 1156</u> Mot. 1156 at 57 Resp. 1181 at 25	Balwani MIL 8 to reconsider rulings from the Holmes trial – Motion to exclude evidence of alleged violations of industry standards and regulations	The parties submit on the papers

10	<u>Dkt. 1156</u> Mot. 1156 at 58 Resp. 1181 at 25	Balwani MIL 8 to reconsider rulings from the Holmes trial – Motion to exclude Theranos’ customer service spreadsheets	The parties submit on the papers
11	<u>Dkt. 1156</u> Mot. 1156 at 59 Resp. 1181 at 25	Balwani MIL 8 to reconsider rulings from the Holmes trial – Motion to exclude evidence of civil or regulatory settlements	The parties submit on the papers
12	<u>Dkt. 1156</u> Mot. 1156 at 60 Resp. 1181 at 25	Balwani MIL 8 to reconsider rulings from the Holmes trial – Motion to exclude interactions with regulatory agencies	The parties submit on the papers
13	<u>Dkt. 1156</u> Mot. 1156 at 60 Resp. 1181 at 25	Balwani MIL 8 to reconsider rulings from the Holmes trial – Motion to exclude evidence of trade secrets practices	The parties submit on the papers
14	<u>Dkt. 1156</u> Mot. 1156 at 61 Resp. 1181 at 25	Balwani MIL 8 to reconsider rulings from the Holmes trial – Motion to exclude evidence on third-party testing platforms	The parties submit on the papers
15	<u>Dkt. 1156</u> Mot. 1156 at 61 Resp. 1181 at 25	Balwani MIL 8 to reconsider rulings from the Holmes trial – Motion to exclude Rule 404(b) evidence for lack of expert support	The parties submit on the papers
16	<u>Dkt. 1156</u> Mot. 1156 at 61 Resp. 1181 at 25	Balwani MIL 8 to reconsider rulings from the Holmes trial – Motion to exclude expert testimony of Dr. Stephen Master	The parties submit on the papers

DATED: February 2, 2022

Respectfully submitted,

ORRICK HERRINGTON & SUTCLIFFE LLP

By: */s/ Jeffrey B. Coopersmith*

Jeffrey B. Coopersmith

Attorney for Defendant
RAMESH “SUNNY” BALWANI

1 DATED: February 2, 2022

Respectfully submitted,

2 STEPHANIE M. HINDS
3 United States Attorney

4 By: */s/ Robert S. Leach*

5 _____
6 Robert S. Leach
7 Assistant United States Attorney
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28